

16064

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest of Forest Service Contract Award]*

FILE: B-199931

DATE: February 10, 1981

MATTER OF: Executone of Redding, Inc.

DIGEST:

*06037  
06039*

1. Concept of responsiveness applies to bids submitted in formally advertised procurements and is not directly applicable to negotiated procurements.
2. While proposal in negotiated procurement must ultimately conform to solicitation, fact that initial proposal may not be fully in accord with RFP requirements is not reason to reject proposal if deficiency is reasonably subject to being made acceptable through negotiation.
3. Where RFP requires offerors to submit detailed proposals and to fully describe manner in which proposal complies with specification, blanket offer of compliance is unacceptable.
4. Forest Service erred in finding offeror's blanket offer to comply technically acceptable and in subsequently awarding contract to nonconforming offeror. Agency should have given offeror opportunity to cure deficiency during negotiations conducted.

Executone of Redding, Inc. (Executone), protests the award of a contract to another offeror under Klamath National Forest Service, Department of Agriculture (Forest Service), request for proposals (RFP) No. R5-05-80-15 to obtain the telephone communication system for new offices.

The RFP required the contractor to furnish equipment capable of at least 72 simultaneous conversations. This requirement was confirmed at the preproposal conference

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attended by two of the offerors, Executone and Pacific Telephone Co. (Pacific). The RFP also provided:

"c. Fulfillment of Requirements

- (1) Mandatory Requirements - The contractor shall describe the manner in which he proposes to satisfy the telephone system requirements described in the Specifications. The type and features of the equipment to be used in the proposed telephone system to satisfy requirements shall be fully described.

\* \* \* \* \*

- "e. Technical Literature - Include technical literature supportive of his proposal and his ability to provide the telephone system."

Three proposals were received. The evaluation board ranked Gaynor Telephone Systems, Inc. (Gaynor), first, Executone second, and Pacific third. After the ratings were given, it was learned that the system offered by Pacific could carry a maximum of only 64 simultaneous conversations and, therefore, Pacific was determined to be "nonresponsive" and eliminated from further consideration.

The award was to be made to the responsive, responsible offeror whose proposal met all the mandatory requirements and was cost effective. Best and final offers were requested from Gaynor and Executone, with Gaynor submitting the lower priced offer. Award was made to Gaynor on the basis of its higher technical evaluation and its lower price.

Pacific protested the award to Gaynor on the basis that the equipment offered by Gaynor did not meet the mandatory technical requirements of the RFP as Gaynor's equipment was capable of only 64 simultaneous conversations. Subsequently, Pacific withdrew its protest because of its substantially higher price. Executone,

upon notification of Pacific's protest, also protested, contending that the Gaynor equipment did not meet the above and other requirements of the RFP.

After investigation of the Gaynor proposal in response to the protests filed, the Forest Service agreed that the protests were correct that the system proposed by Gaynor did not meet the specifications. However, the agency reported that in accepting Gaynor's proposal it relied upon representations in Gaynor's proposal which stated it would "comply in all respects" with the RFP. The investigation revealed that extensive and expensive modification would be required to bring the equipment into conformity. Since at that time the contract was approximately 50 to 75 percent completed, it was determined to be in the best interests of the Government to complete the contract and seek a price adjustment. Gaynor admits that the system it offered was capable of only 64 simultaneous conversations and that it had inadvertently overlooked the requirement of 72 simultaneous conversations. Gaynor proposed a price reduction to compensate for the error. The record shows, however, that Gaynor has since modified its equipment without cost to the Government to conform to the RFP specifications.

Executone alleges that the award to Gaynor was null and void in that Gaynor's proposal was nonresponsive to the RFP and that it had informed the Forest Service of Gaynor's nonconformance prior to award. Executone indicated that it submitted the only bid which met all of the RFP specifications and, therefore, it should be awarded the contract. In addition, Executone alleged that, in violation of RFP terms, Gaynor did not list three installations in California or Oregon which had similar equipment to that offered, that none of the installations listed were maintained by Gaynor, and that the equipment offered was not manufactured by an American company.

Initially, we note that although Executone and the Forest Service used the term "nonresponsive" in connection with the proposals received from Pacific and Gaynor,

it is inappropriate generally to discuss the compliance of a proposal with the terms of the RFP in terms of responsiveness. The concept of responsiveness applies to bids submitted in formally advertised procurements and is not directly applicable to negotiated procurements such as the one involved here. While a proposal in a negotiated procurement must ultimately conform to the solicitation, the fact that an initial proposal may not be fully in accord with the RFP requirements is not reason to reject the proposal if the deficiency is reasonably subject to being made technically acceptable through negotiation. Pacificon Productions, Inc., B-196371, July 22, 1980, 80-2 CPD 58.

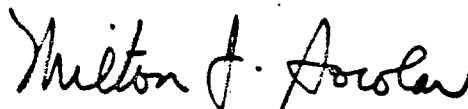
It is clear that Gaynor's initial proposal did not demonstrate compliance with the requirement that the system was capable of 72 simultaneous conversations. Instead, Gaynor made an unacceptable blanket offer to comply with that requirement in violation of the above-quoted RFP provisions. See Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD 144. The Forest Service, therefore, erred in finding Gaynor's blanket offer to comply technically acceptable. Although the Forest Service did conduct negotiations and should have afforded Gaynor the opportunity to cure the deficiency, this was not done. (We note that, after award, Gaynor supplied conforming equipment at no cost.) Therefore, the awarding of the contract to Gaynor was improper. Accordingly, Executone's protest is sustained.

Since the protest has been sustained, we do not find it necessary to respond to the other allegations raised by Executone. However, we note that the Forest Service has stated all proposals were confidential and not discussed outside of the Government, so that the nature of Gaynor's proposal could not have been known by any other offeror prior to award despite Executone's assertion to the contrary.

Although the protest is sustained, we are not recommending any corrective action since the contract has been fully performed. As stated above, at the time the inadequacy of Gaynor's proposal was discovered, the contract was 50 to 75 percent completed, and it was

considered in the best interests of the Government to complete the contract. The extent of performance is a proper consideration in proposing corrective action. See Zero Manufacturing Co., B-197371, October 15, 1980, 80-2 CPD 279.

By letter of today, we are advising the Secretary of Agriculture of the above deficiencies to prevent recurrence in the future.

A handwritten signature in dark ink, reading "Milton J. Arnold". The signature is written in a cursive style with a large, stylized "M" and "A".

For the Comptroller General  
of the United States